

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF GEORGIA
SAVANNAH DIVISION**

KENNETH WAITHE and LINDA)	
WAITHE, Individually and on behalf of All)	
Others Similarly Situated,)	
)	
Plaintiffs,)	Civil Action No.:
)	4:09cv21
)	
vs.)	
)	
ARROWHEAD CLINIC, INC., et al.,)	
)	
Defendants.)	

MOTION FOR STATUS CONFERENCE

Defendants Arrowhead Clinic, Inc., Arrowhead Management, Inc., Harry W. Brown, Inc., H. Brown Management Company, LLC, and Harry W. Brown, Jr. (“Brown/Arrowhead Defendants” or “these Defendants”) hereby move the Court to schedule a brief status conference in this action at the Court’s earliest convenience, and in support of the Motion¹ show the Court as follows:

PROCEDURAL HISTORY

This case was filed in November 2008, and was removed to this Court on January 29, 2009. (Doc. 1). The Brown/Arrowhead Defendants moved to dismiss all claims. (Doc. 7). A motion to stay discovery during the pendency of the Defendants’ motion to dismiss was granted on April 22, 2009. (Doc. 32).

¹ Counsel for Plaintiffs and Co-Defendants do not oppose this Motion. Plaintiffs’ counsel noted

Thereafter, on August 24, 2009, the Court entered an order staying the entire case until another case (CV209-96) was resolved. (Doc. 43). On September 3, 2010, the Court directed the clerk to lift the stay of this case and directed that a new scheduling order be entered. (Doc. 52). On December 9, 2010, the Court entered a new scheduling order in this case. (Doc. 53).

Per the scheduling order, the parties held their Rule 26(f) conference on January 3, 2011. The parties ultimately filed a Joint Rule 26(f) Report on February 25, 2011, which contained a mutually agreeable amended scheduling order. (Doc. 68).² Plaintiffs have subsequently filed two consent motions to extend certain deadlines and for an amended scheduling order – on February 16 and March 4. (Docs. 66, 74). Both of these Motions are pending.

STATE OF THE CLAIMS

On January 12, 2011, the Court granted in part and denied in part the Brown/Arrowhead Defendants' Motion to Dismiss, and granted Plaintiffs leave to amend Count III of their Amended Complaint. (Doc. 55). Subsequently, Plaintiffs filed their Second Amended Complaint on January 24, 2011. (Doc. 59). The Brown/Arrowhead Defendants filed a Motion to Dismiss the entire Second Amended Complaint on February 14, 2011 (Doc. 63), and Defendants Robert D.

that he supports the Motion.

² In the interim, Plaintiffs filed Plaintiffs' Rule 26(f) Report (Doc. 57), and Defendants filed Defendants' Rule 26(f) Report on the extended deadline of February 7, 2011. (Doc. 62).

Stein, Robert D. Stein d/b/a Robert Stein & Associates, and Legal Counsel, Inc. (“the Stein Defendants”) filed a Motion to Dismiss Count Three, and a Motion for Judgment on the Pleadings as to Count Four. (Doc. 65).³ The Stein Defendants also filed an Answer. (Doc. 64).

Plaintiffs filed a Consent Motion for a two-week extension of time to respond to Defendants’ Motions (Doc. 72), and a Clerk’s Order granting the request was entered on March 3, 2011. (Doc. 73). Accordingly, Plaintiffs’ Response to Defendants’ Motions to Dismiss and the Stein Defendants’ Motion for Judgment on the Pleadings is due on March 17, 2011. If Defendants wish to file reply briefs, those briefs will be due on or before April 4, 2011.

CURRENT SCHEDULING ORDER

Per the Court’s current scheduling order, Plaintiffs’ expert witness reports were due on February 15, 2011, and Defendants’ expert witness reports are due on March 15, 2011. Discovery in this case is set to expire on April 8, 2011 – the same week that briefing will close on the Defendants’ Motions to Dismiss and the Stein Defendants’ Motion for Judgment on the Pleadings. Two consent motions have been filed seeking to extend the discovery deadlines, and remain pending with no disposition. (Docs. 66, 74).

³ Defendants had filed a Consent Motion for an extension of time to answer Plaintiffs’ Second

ARGUMENT

The parties are currently engaged in ongoing discovery in this case. As discovery is proceeding, however, these Defendants recognize that the parties need clarity in regards to both the scope and timeframe of discovery.

Although the parties have sought to extend the discovery deadline, the Court has not entered a modified or revised scheduling order. Moreover, the parties' initial proposal may be impracticable now, as the deadlines for the responses to the motions have been extended and the fundamental issue of which claims are in the action remains uncertain. These Defendants certainly are not in a position to close discovery while the claims are in such a state of uncertainty.

Furthermore, this case is a putative class action. In their Joint Rule 26(f) Report the parties have proposed a mutually agreeable plan for bifurcating discovery into two phases – for the individual claims and the class claims. (*See* Doc. 68). However, as no scheduling order has been entered addressing bifurcation, the parties cannot confidently engage in bifurcated discovery without fear of losing the right to conduct any discovery after April 8.

Accordingly, given the state of uncertainty of the claims and the discovery in this case, the Brown/Arrowhead Defendants respectfully request a brief status conference at the Court's earliest convenience so that these issues may be

addressed, a modified scheduling order may be entered, and the parties may conduct discovery with more efficiency and certainty.

Respectfully submitted this 15th day of March 2011.

/s/ Tracy M. Elliott

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CERTIFICATE OF SERVICE

This is to certify that I have on this day served all the parties in this case in accordance with the directives from the Court Notice of Electronic Filing ("NEF") which was generated as a result of electronic filing:

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Submitted this 15th day of March, 2011.

/s/ Tracy M. Elliott